

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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CHARLES BECOAT,

Plaintiff,

v.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, et al.,

Defendants.

Case No. 2:15-cv-02144-JCM-PAL

**ORDER
– AND –
REPORT OF FINDINGS AND
RECOMMENDATION**

(IFP App. – ECF No. 4; Mot. for Waiver of
Filing Fee – ECF No. 5)

This matter is before the court on Plaintiff Charles Becoat's Application to Proceed *In Forma Pauperis* (ECF No. 4), Motion for Waiver of Filing Fee (ECF No. 5), and Motion to Vacate Dismissals (ECF No. 6). These filings are referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(A) and LR IB 1-3 and 1-7 of the Local Rules of Practice.

Mr. Becoat is a prisoner in the custody of the Nevada Department of Corrections and he is proceeding in this action *pro se*, which means that he is not represented by an attorney. *See* LSR 2-1. On November 9, 2015, he submitted a Complaint (ECF No. 1), which the clerk filed as an initiating document, but he did not pay the \$400 standard filing fee or submit an application to proceed *in forma pauperis* ("IFP"), meaning without prepaying the full filing fee. In order to proceed in an action without prepaying the filing fee, LSR 1-1 of the Local Rules of Practice and 28 U.S.C. § 1915 provide that a litigant must submit the court's form IFP application. Additionally, LSR 1-2 and § 1915 specifically require three items be submitted to this court with a prisoner's IFP application: (1) a financial certificate signed by an authorized officer of the institution in which he or she is incarcerated, (2) a copy of his or her inmate trust account statement for the six-month period prior to filing, and (3) a signed financial affidavit showing an inability to prepay fees and costs or give security for them.

1 On November 30, 2015, the court issued an Order (ECF No. 2) explaining to Plaintiff that
2 if he wants the court to consider his complaint, he must prepay the filing fee or submit an IFP
3 application along with the documents identified above. However, Mr. Becoat was advised that
4 even if he did, the court must still screen his complaint to determine if it states a valid claim for
5 relief. *See* 28 U.S.C. § 1915A.

6 Mr. Becoat's complaint attempts to state a claim against the Las Vegas Metropolitan
7 Police Department and one of its officers, Detective Michael Kitchen, for violating his civil
8 rights by fabricating an arrest warrant against him in September 2013. From the complaint it
9 appears Mr. Becoat is claiming that he was arrested for attempted murder and locked up in the
10 Clark County Detention Center and state prison based on Detective Kitchen's fabricated warrant.
11 This suggests he was convicted of a felony offense arising out of the warrant and arrest.

12 The Order (ECF No. 2) informed Mr. Becoat that if he is challenging the fact of his arrest
13 and subsequent incarceration that resulted in a conviction or sentence, his civil rights claim is
14 barred. *Heck v. Humphrey*, 512 U.S. 477, 487 (1994). Federal district courts do not have
15 appellate jurisdiction over a state court, whether by direct appeal, mandamus, or otherwise. *See*,
16 *e.g.*, *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *Bianchi v. Rylaarsdam*, 334 F.3d 895,
17 898 (9th Cir. 2003). When a state prisoner files a civil rights action, the court "must consider
18 whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his
19 conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can
20 demonstrate that the conviction or sentence has already been invalidated." *Heck*, 512 U.S. at
21 487; *see also Wilkinson v. Dotson*, 544 U.S. 74, 78 (2005). Mr. Becoat alleges that he is still in
22 custody of the Nevada Department of Corrections and would like to be released from prison if he
23 succeeds in this action. Because it does not appear that his conviction was reversed on direct
24 appeal, expunged by executive order, or declared invalid, the Order (ECF No. 2) noted that Mr.
25 Becoat's complaint does not state a claim upon which relief can be granted.

26 The Order (ECF No. 2) gave Mr. Becoat until December 30, 2015, to file an IFP
27 application accompanied by a signed and executed financial certificate, a signed and executed
28 financial affidavit, and a statement of his inmate trust account. Alternatively, the court informed

1 him that he could pay the \$400 filing fee on or before December 30, 2015. Mr. Becoat was
2 warned that his failure to comply with the Order by (a) submitting a completed IFP application,
3 or (b) paying the filing fee before the deadline would result in a recommendation to the district
4 judge that this case be dismissed.

5 On December 22, 2015, he submitted an incomplete IFP Application (ECF No. 4). The
6 court could not determine whether Mr. Becoat qualified to proceed because the application failed
7 to include the required financial certificate or a copy of his inmate trust account statement. He
8 also filed a Motion for Waiver of Filing Fee (ECF No. 5), which stated that it may be three to
9 four weeks before the completed financial certificate and inmate account statement would be
10 returned from prison officials. Mr. Becoat stated that he would submit those documents upon
11 receipt. Months later, on April 12, 2016, he filed a Motion to Vacate Dismissals (ECF No. 6),
12 which states he believes his complaint was dismissed for failure to submit the required financial
13 certificates. However, this case was not dismissed. The motion claims he “did send the required
14 information to your office” that he received from accounting after waiting for months. To date,
15 Mr. Becoat has not submitted the required financial certificate or a copy of his inmate trust
16 account statement, requested an extension of time, or taken any other action to prosecute this
17 case.

18 Accordingly,

19 **IT IS ORDERED:** Plaintiff Charles Becoat’s Motion for Waiver of Filing Fee (ECF
20 No. 5) and Motion to Vacate Dismissals (ECF No. 6) are DENIED.

21 **IT IS RECOMMENDED:**

- 22 1. Plaintiff Charles Becoat’s Application to Proceed *In Forma Pauperis* (ECF No. 4) be
23 DENIED and this action be DISMISSED without prejudice to the Plaintiff’s ability to
24 commence a new action in which he either pays the appropriate filing fee in full or
25 submits a completed application to proceed *in forma pauperis*.

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Dated this 29th day of August, 2016.

NOTICE

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